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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. ANTHONY BISENTE CALDERA, Defendant and Appellant.	G040583 (Super. Ct. No. 06NF0503) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard M. King, Judge. Affirmed.

Warren P. Robinson, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Gil Gonzalez and Lynne G. McGinnis, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Defendant Anthony Bisente Caldera pleaded guilty to possession of amphetamine for sale (Health & Saf. Code, § 11378), and admitted suffering a prior conviction under the Three Strikes law. He argues the trial court erred when it denied his motion to suppress evidence. (Pen. Code, § 1538.5.) For the reasons expressed below, we affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

On January 11, 2006, Anaheim Police Investigator Paul Christy received information from a confidential informant that Vanessa Paine, whom Christy knew from prior contacts, and Lucy Gilbertson were staying at a La Palma motel room rented under the name Paul Montes. Christy conducted a warrant check through the National Crime Information Center (NCIC), a law enforcement clearinghouse, and learned outstanding arrest warrants existed for both women. He also discovered both women were on formal probation and subject to search and seizure terms.

On January 12, Christy and other officers arrived at the motel and confirmed with the desk clerk Montes was a registered guest. The officers devised a ruse to prompt one of the occupants out of the room. They asked the clerk to call the room and complain there was a problem with the rent payment. When Chris Taulbee opened the motel room door, Christy approached, identified himself as a police officer and explained he was conducting a narcotics investigation. Defendant stood about three feet behind Taulbee. Paine and another woman stood about 10 feet behind defendant. Defendant "made an abrupt movement and started walking hurriedly back into the room," with his hand in his pocket. The officer followed because he "was in fear of [his] safety. I wasn't sure what he was going to do, and I thought he might arm himself." He ordered defendant to show his hands. Christy was in the process of grabbing defendant when defendant threw something to the ground. Christy grabbed defendant, pushed him onto

the bed and patted him down. He recovered the item from the carpet, which turned out to be two clear plastic baggies containing amphetamine. Christy arrested and searched defendant and found a mobile phone and approximately $295. Christy searched the room, relying on Paine's search condition and found a scale.

Defendant's testimony at the suppression hearing contradicted Christy's account. According to defendant, Christy entered the room with a gun drawn, ordered Taulbee to the floor, and warned defendant not to move or "I'm going to shoot you." Christy ordered him to take his hands out of his pockets, and pointed the gun at his head. Defendant denied dropping anything on the floor.

The trial court denied defendant's motion to suppress. The court expressly resolved all credibility determinations in favor of Christy and against defendant. Defendant pleaded guilty in February 2008 and the court sentenced him to 32 months in prison, double the low term, in May 2008.

II

DISCUSSION

Trial Court Did Not Err in Denying Defendant's Motion to Suppress Evidence

The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's express or implied factual findings if supported by substantial evidence, but independently apply constitutional principles to the trial court's factual findings in determining the legality of the search under the Fourth Amendment. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

Defendant first contends the court erred by admitting evidence Paine and Gilbertson had outstanding warrants and were subject to search and seizure as a condition of probation. He relies on the *Harvey-Madden* rule. (*People v. Madden* (1970) 2 Cal.3d 1017 (*Madden*); *People v. Harvey* (1958) 156 Cal.App.2d 516; see *Remers v. Superior Court* (1970) 2 Cal.3d 659 (*Remers*).)

The *Harvey-Madden* rule provides that officers in the field may make arrests on the basis of information furnished to them by other officers, but "'"when it comes to justifying the total police activity in a court, the People must prove that the source of the information is something other than the imagination of an officer who does not become a witness." [Citations.] . . . '" (*Madden, supra,* 2 Cal.3d at p. 1021.) The concern is an officer might manufacture reasonable grounds for arrest within a police department by having one officer transmit information purportedly known by him to another officer who did not know such information, without establishing under oath how the information had in fact been obtained by the former officer. If this were permissible, "'every utterance of a police officer would instantly and automatically acquire the dignity of official information; "reasonable cause" or "reasonable grounds," . . . could be conveniently fashioned out of a two-step communication; and all Fourth Amendment safeguards would dissolve as a consequence.'" (*Remers, supra,* 2 Cal.3d at p. 667.)

The prosecution may overcome a *Harvey-Madden* objection by producing the warrant or a teletype abstract of the warrant, but "[p]roof that the warrant information precipitating the arrest was not manufactured may be made by circumstantial evidence other than the warrant or a certified copy." (*People v. Armstrong* (1991) 232 Cal.App.3d 228, 245 (*Armstrong*).) *Armstrong* explained that "proof of transmission to one police department of official information from a different police agency, *of the fact a warrant for arrest exists*, . . . negates an inference of the manufacture of probable cause for arrest by the dispatcher or the police department employing him." (*Id.* at p. 246, italics added.)

Here, Christy testified he obtained the information concerning Paine and Gilbertson from the NCIC database that allowed the officer to verify whether a person was on probation or parole. Christy's testimony provided substantial evidence the information was based on something other than the imagination of a nontestifying officer. Defendant was free to cross-examine Christy on the subject, and could have presented evidence the database did not contain the information concerning the women. (See

Armstrong, *supra*, 232 Cal.App.3d at p. 245; *People v. Orozco* (1981) 114 Cal.App.3d 435, 444-445.)

The present situation is distinguishable from cases cited by defendant, including *People v. Alcorn* (1993) 15 Cal.App.4th 652 and *People v. Collins* (1997) 59 Cal.App.4th 988. Both those cases involved arrests based on warrants naming the *defendant*. *Alcorn* held the prosecution adequately proved the existence of a facially valid warrant for the defendant's arrest with testimony the arresting officer had seen a teletype abstract of the warrant and introduction of the teletype into evidence. The court held the introduction into evidence of the warrant itself and documentation supporting its issuance was not necessary to prove the legality of the arrest for *Harvey-Madden* purposes, where the teletype "identif[ied] the warrant with sufficient particularity to allow the defendant to obtain a copy of the warrant . . . ." (*Alcorn,* at p. 660.) In *Collins*, the court held the prosecution failed to prove valid arrest warrants existed because it offered only the arresting officer's testimony to validate the authenticity of the warrants. But the officer in that case had never seen the warrants, relating only that a dispatcher claimed they showed up on the computer. Based on *Alcorn* and other *Harvey-Madden* cases, the court concluded this was insufficient to show a lawful arrest.

Unlike *Alcorn* and *Collins*, police officers did not detain defendant based on an outstanding warrant for his arrest. The warrants and other information concerned third parties and formed only part of the total circumstances relied on by Christy to enter the room and detain defendant. Christy testified he, not a dispatcher, saw the computer entries. Thus, the prosecution established that Christy acted reasonably in relying on the information he received from the NCIC. Defendant failed to contest the evidence concerning the validity of the arrest warrants for defendant's companions, although nothing precluded him from calling witnesses or presenting other evidence contradicting Christy's testimony. (See *People v. Gomez* (2004) 117 Cal.App.4th 531, 541.) The trial court did not err in overruling defendant's *Harvey-Madden* objection.

Defendant next contends that even if the court correctly admitted evidence tending to show the women were subject to probationary search conditions, the officers did not have authority to enter the motel room.[1] Defendant asserts a warrantless entry into a residence is presumptively unreasonable under the Fourth Amendment. (See *People v. Mendoza* (1979) 87 Cal.App.3d 1008 [officer may not enter residence without warrant to effect detention].) He concedes officers may enter the residence *of a probationer* subject to a search condition without a warrant, and they may search shared areas of the residence based on the probationer's advance consent (*People v. Robles* (2000) 23 Cal.4th 789, 795-796; *People v. Woods* (1999) 21 Cal.4th 668, 675-676), but challenges the sufficiency of the evidence to show Paine and Gilbertson resided in the motel room.

We disagree. As noted above, Christy learned from the informant the women admitted they were staying in a motel room registered to Montes. Christy found Paine in Montes's room a day after receiving this information, which suggests she was indeed staying in the room. Notwithstanding the informant's criminal record and the lack of other evidence establishing his or her reliability, Christy's observations corroborated the informant's information and established the women had sufficient connection to the room to permit entry and a probation search. (See *People v. Boyd* (1990) 224 Cal.App.3d 736, 749-751 [parole search permissible where officers entertained reasonable suspicion the area searched was owned, controlled, or possessed by parolee].) Also, defendant's conduct after Christy identified himself and asked him to show his hands raised safety concerns justifying entry and detention. (*People v. Wilson* (1997) 59 Cal.App.4th 1053, 1061-1063.)

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[1] Defendant's relationship to the room and the other persons present was not established, but the prosecution did not claim defendant lacked a reasonable expectation of privacy in the place searched. (*Stoner v. California* (1964) 376 U.S. 483, 490.)

Finally, defendant argues even if officers acted reasonably in entering the motel room, they did not have probable cause to search him. His argument rests on the flawed premise Christy arrested and searched him before he discarded the drugs. The record reflects once defendant saw the officers, he quickly retreated into the room. Christy told him to show his hands, but defendant threw something to the ground. Christy grabbed defendant and pushed him to the bed and patted him down. Christy then recovered the amphetamine from the floor. The totality of the circumstances, including defendant's presence in the room with a known probationer and his sudden movement into the room and the discarding of an object warranted a detention (*Terry* v. *Ohio* (1968) 392 U.S. 1, 21; *People v. Souza* (1994) 9 Cal.4th 224), and the subsequent discovery of the drugs justified his arrest and search incident to arrest (*People v. Boissard* (1992) 5 Cal.App.4th 972, 977-978).[2]

[2] The Attorney General also argues defendant voluntarily abandoned the drugs before he was detained, entitling Christy to seize the contraband and arrest defendant. (*California v. Hodari D.* (1991) 499 U.S. 621, 624; *People v. Patrick* (1982) 135 Cal.App.3d 290, 291-294.) In light of our conclusions above, we need not address this argument.

III

DISPOSITION

The trial court did not err in denying defendant's suppression motion. The judgment is affirmed.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

O'LEARY, J.